UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* MICHAEL R. KELLER,
GREGORY W. MEARS, and KELLY HUTTELMAIER

_____

Appeal 2016-007404
Application 13/077,552
Technology Center 2100

_____

Before ELENI MANTIS MERCADER, JOHN P. PINKERTON, and
STEVEN M. AMUNDSON, *Administrative Patent Judges*.

AMUNDSON, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants[1] seek our review under 35 U.S.C. § 134(a) from a final
rejection of claims 1, 5–10, 12–16, and 18–22, i.e., all pending claims. We
have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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[1] Appellants identify the real party in interest as Rockwell Automation
Technologies, Inc. App. Br. 2.

STATEMENT OF THE CASE

*The Invention*

According to the Specification, the invention relates "to the field of machine automation control products." Spec. ¶ 2.[2] The Specification explains that a machine automation system includes interface software configured to receive a device selection, identify at least one device specific menu item from a group of device specific menu items by querying each of the device specific menu items with a characteristic of the selected device to identify which of the device specific menu items should be displayed, and display the device specific menu item in a control window. Abstract; *see* Spec. ¶ 5.

*Exemplary Claim*

Independent claim 1 exemplifies the subject matter of the claims under consideration and reads as follows:

> 1. A non-transitory computer readable medium having program instructions stored thereon that, when executed by a configuration system for controlling a plurality of devices in a machine automation environment, direct the configuration system to:
>
> > receive a selection of at least one machine automation device of the plurality of devices;
> >
> > display a control window associated with the machine automation device;

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[2] This decision uses the following abbreviations: "Spec." for the Specification, filed March 31, 2011; "Final Act." for the Final Office Action, mailed April 24, 2015; "Adv. Act." for the Advisory Action, mailed July 2, 2015; "App. Br." for the Appeal Brief, filed January 4, 2016; "Ans." for the Examiner's Answer, mailed May 20, 2016; and "Reply Br." for the Reply Brief, filed July 20, 2016.

        identify at least one standard menu item which is compatible with the machine automation device and other machine automation devices in the machine automation environment;

        query each of a plurality of device specific menu items with a device type of the machine automation device, a status of the machine automation device, and a status of the machine automation environment to identify which of each of the plurality of device specific menu items should be displayed, wherein each device specific menu item includes information relating to applicability of each device specific menu item to the device type of the machine automation device, the status of the machine automation device, and the status of the machine automation environment; and

        display the identified device specific menu items along with the at least one standard menu item in the control window.

App. Br. 16 (Claims App.).

*The Prior Art Supporting the Rejections on Appeal*

As evidence of unpatentability, the Examiner relies on the following prior art:

| | | |
|---|---|---|
| Porcari et al. ("Porcari") | US 2004/0025048 A1 | Feb. 5, 2004 |
| Wolf et al. ("Wolf") | US 2004/0072611 A1 | Apr. 15, 2004 |
| Miura et al. ("Miura") | US 2007/0250793 A1 | Oct. 25, 2007 |
| Baier et al. ("Baier") | US 2009/0089225 A1 | Apr. 2, 2009 |
| Humpleman et al. ("Humpleman") | US 2010/0064227 A1 | Mar. 11, 2010 |
| Park | US 2010/0315563 A1 | Dec. 16, 2010 |

*The Rejections on Appeal*

Claims 1, 5, 6, 8, 10, 12, 13, 15, 16, and 19–21 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Baier, Miura, and Park. Final Act. 2–7; App. Br. 7.

Claims 7, 14, and 18 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Baier, Miura, Park, and Wolf. Final Act. 7–8; App. Br. 7.

Claim 9 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Baier, Miura, Park, and Humpleman. Final Act. 8–9; App. Br. 7.

Claim 22 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Baier, Miura, Park, and Porcari. Final Act. 9; App. Br. 7.

ANALYSIS

We have reviewed the rejections of claims 1, 5–10, 12–16, and 18–22 in light of Appellants' arguments that the Examiner erred. For the reasons explained below, we disagree with Appellants' assertions regarding error by the Examiner. We adopt the Examiner's findings in the Final Office Action (Final Act. 2–10), Advisory Action (Adv. Act. 2), and Answer (Ans. 2–8). We add the following to address and emphasize specific findings and arguments.

*The Rejection of Claims 1, 5, 6, 8, 10, 12,*
*13, 15, 16, and 19–21 Under 35 U.S.C. § 103(a)*

QUERYING DEVICE-SPECIFIC MENU ITEMS

Appellants argue that the Examiner erred in rejecting independent claim 1 because:

> none of the art of record teaches or suggests querying each of a plurality of device specific menu items with a ***device type*** of the machine automation device, a ***status*** of the machine automation device, and a ***status of the machine automation environment***

> to identify which of each of the plurality of device specific
> menu items should be displayed, wherein each device specific
> menu item *includes information relating to the applicability* of
> each device specific menu item to the *device type* of the
> machine automation device, the *status* of the machine
> automation device, and the *status of the machine automation
> environment*.

App. Br. 10; *see* Reply Br. 2–3; *see also* App. Br. 8–9.

In particular, Appellants contend that "Baier does not specifically
refer here to a *device type* of a machine automation device or a *status of a
machine automation environment* as recited in claim 1." App. Br. 8.
Appellants contend that Miura "fails to teach or suggest that the criteria
stored with each menu item includes *information* relating to applicability of
each device specific menu item to the device type of the machine automation
device, the status of the machine automation device, and the status of the
machine automation environment." *Id.* at 10. Appellants further contend
that Baier, Miura, and Park do not "specifically disclose identifying menu
items of any kind based on *all three* criteria recited in claim 1," i.e., device
type, device status, and environment status. *Id.* at 8, 10–11.

Appellants' contentions do not persuade us of Examiner error
because, as the Examiner notes, the contentions address the references
individually. Ans. 3. Where a rejection rests on a combination of
references, an appellant cannot establish nonobviousness by attacking the
references individually. *See In re Merck & Co.*, 800 F.2d 1091, 1097
(Fed. Cir. 1986). Moreover, "the test for combining references is not what
the individual references themselves suggest but rather what the combination
of disclosures taken as a whole would suggest to one of ordinary skill in the

art." *In re McLaughlin*, 443 F.2d 1392, 1395 (CCPA 1971); *see In re Keller*, 642 F.2d 413, 425 (CCPA 1981).

Here, the combination of disclosures in Baier and Miura teaches or suggests querying device-specific menu items according to claim 1. The Examiner finds that Baier discloses identifying information to be displayed based on device type, device status, and environment status. Final Act. 3, 10 (citing Baier ¶¶ 54, 55, 76, 77, 80, 126); *see* Adv. Act. 2; Ans. 2–3 (citing Baier ¶¶ 6, 76, 77, 80, 84, 117, 126, 136). For example, Baier discloses: (1) determining "states of the system, [and] environment"; (2) capturing "device data, [and] environment data"; (3) monitoring "conditions" including "type of machinery, [and] state of system"; (4) determining "status of device/equipment/system" and "machine operating state"; and (5) obtaining "[r]eal-time data regarding relevant devices and/or equipment" including "the operating status of the device/equipment," e.g., "off, on, run." Baier ¶¶ 54, 76, 80, 84, 117, 126. Baier also discloses dynamically adapting a user interface based on various conditions, e.g., device type, device status, and environment status. *Id.* ¶¶ 6, 64, 76, 77, 84, 126, 136; *see* Ans. 2–3 (citing Baier ¶¶ 76, 77, 84, 126, 136).

In addition, the Examiner finds that Miura discloses (1) a user-customizable menu that permits the display of menu items based on their respective contexts and (2) including with a menu item information for determining its applicability to a particular context. Ans. 3–4 (citing Miura ¶¶ 75–80, 142–144); *see* Final Act. 3–4 (citing Miura ¶¶ 75–80, 142–144); Adv. Act. 2. Miura explains that "menus are generated by creating a master menu that has all potential menu items and then applying a display filter that determines which menu items are to be displayed with the menu" and that

6

"[t]he display filter may be implemented as a program that determines which menu items are to be displayed based on specified criteria," including "recogniz[ing] what menu items are applicable to a particular context." Miura ¶¶ 142, 143. Miura also explains that "[t]he criteria for determining whether a particular menu item is to be displayed may be stored with . . . the menu item . . . ." *Id.* ¶ 144.

Consequently, the combination of disclosures in Baier and Miura teaches or suggests that device type, device status, and environment status provide the context for displaying a menu item, e.g., "type of machinery" and "off, on, run" machinery status. Where a menu item's display depends on device type or device status (or both), the menu item constitutes a device-specific menu item. In addition, the combination of disclosures teaches or suggests including device type, device status, and environment status with menu items.

## IDENTIFYING A STANDARD MENU ITEM

Appellants argue that the Examiner erred in rejecting claim 1 because Miura does not teach or suggest "identify at least one standard menu item which is compatible with the machine automation device and other machine automation devices in the machine automation environment," as recited in claim 1. App. Br. 9. Appellants further argue that Miura "fails to explicitly teach or suggest" that any menu item corresponds to either (1) "a <u>standard menu item</u> which is compatible" with multiple devices or (2) a device-specific menu item. *Id.* According to Appellants, Miura "<u>simply makes no distinction between</u>" a standard menu item and a device-specific menu item. *Id.*

7

Appellants' arguments do not persuade us of Examiner error. The Examiner finds that Miura discloses a default menu corresponding to a standard menu that "may include menu items for functions that are common . . . ." Final Act. 4 (citing Miura ¶¶ 129, 130); Ans. 5 (citing Miura ¶¶ 129, 130). Miura's "menu items for functions that are common" correspond to standard menu items. Miura's disclosure comports with the Specification's explanation that "[s]tandard menu items are menu items which are applicable to multiple types of devices" or "applicable to multiple devices." Spec. ¶¶ 40, 44. Further, the Examiner finds that Miura also discloses context-sensitive menu items corresponding to device-specific menu items. Final Act. 3–4 (citing Miura ¶¶ 75–80, 142, 143); Ans. 3–4 (citing Miura ¶¶ 75–80, 142, 143). Contrary to Appellants' contention, Miura distinguishes between standard menu items and device-specific menu items. *See* Miura ¶¶ 129, 130, 142, 143.

DISPLAYING A STANDARD MENU ITEM
ALONG WITH A DEVICE-SPECIFIC MENU ITEM

Appellants argue that the Examiner erred in rejecting claim 1 because "none of the art of record teaches or suggests combining at least one standard menu item with identified device specific menu items for display in a control window, as required by claim 1." App. Br. 11; *see* Reply Br. 4. More specifically, Appellants assert that Park "fails to teach or suggest displaying both device specific menu items along with at least one standard menu item in a control menu." App. Br. 11. Appellants concede that Park discloses user selection of a control item from a control menu. *Id.* (citing Park ¶¶ 48, 61); *see* Reply Br. 2. But Appellants assert that Park does not distinguish between standard menu items and device-specific menu items

and, therefore, fails to teach or suggest displaying both kinds of menu items as required by claim 1. App. Br. 11.

Appellants' assertions do not persuade us of Examiner error because, as the Examiner notes, the assertions address the references individually. Ans. 7. The Examiner finds that Park discloses "identifying and displaying a menu associated with an external device." Ans. 2, 7 (citing Park ¶¶ 61, 62); *see* Final Act. 5, 10 (citing Park ¶¶ 47, 61, 62, Fig. 4); Adv. Act. 2. More particularly, Park teaches displaying a device-specific control menu for an external device after a user selects the device from among multiple devices. Park ¶¶ 47, 60, 61, Figs. 3–4. Park also teaches that the device-specific control menu includes "a plurality of control items." *Id.* ¶¶ 48, 62. Additionally, as discussed above, the Examiner finds that Miura discloses (1) context-sensitive menu items corresponding to device-specific menu items and (2) "menu items for functions that are common" corresponding to standard menu items. Final Act. 3–4 (citing Miura ¶¶ 75–80, 129, 130, 142, 143); Ans. 3–4, 7 (citing Miura ¶¶ 75–80, 129, 130, 142, 143); *see* App. Br. 12 (citing Miura ¶ 143). Accordingly, the combination of disclosures in Park and Miura teaches or suggests displaying both kinds of menu items as required by claim 1. In addition, we note that Miura discloses displaying "menu items for functions that are common" along with context-sensitive menu items. Miura ¶¶ 129, 130.

SUMMARY FOR INDEPENDENT CLAIM 1

For the reasons discussed above, Appellants' arguments have not persuaded us that the Examiner erred in rejecting claim 1 for obviousness based on Baier, Miura, and Park. Hence, we sustain the rejection of claim 1.

INDEPENDENT CLAIMS 10, 16, 20, AND 21
AND DEPENDENT CLAIMS 5, 6, 8, 13, 15, AND 19

Appellants do not make any separate patentability arguments for
independent claims 10, 16, 20, and 21 or dependent claims 5, 6, 8, 13, 15,
and 19. App. Br. 8–13; Reply Br. 2–4. Because Appellants do not argue the
claims separately, we sustain the rejection of claims 5, 6, 8, 10, 13, 15, 16,
and 19–21 for the same reasons as claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

DEPENDENT CLAIM 12

Claim 12 depends from claim 10 and recites the following additional
steps:

> identifying an alternative device specific menu item in
> response to a change in the status of the machine automation
> device;
>
> loading the alternative device specific menu item;
>
> removing the device specific menu item from the control
> window; and
>
> displaying the alternative device specific menu item in
> the control window.

App. Br. 18 (Claims App.).

Appellants argue that the Examiner erred in rejecting claim 12
because (1) the cited portions of Miura describe a display filter configured to
determine menu items applicable to a particular context and (2) "applying a
display filter to determine which menu items should be displayed when a
user requests a menu fails to teach or suggest" claim 12's limitations. App.
Br. 12 (citing Miura ¶¶ 142, 143). Appellants also argue that different menu
items appear in Miura based on a user's selections rather than "a ***change in
the status of the machine automation device***, as recited in claim 12." *Id.*
at 13. According to Appellants, "Miura does not identify an ***alternative***

device specific menu item to replace an initial device specific menu item originally displayed in a control window, let alone identifying such an alternative in response to a change in the status of the machine automation device." *Id.*

Appellants' arguments do not persuade us of Examiner error because, as the Examiner notes, the arguments address the references individually. Ans. 7. As discussed above, the Examiner finds that Miura discloses a user-customizable menu that permits the display of menu items based on their respective contexts. Ans. 3–4, 8 (citing Miura ¶¶ 75–80, 142, 143); *see* Final Act. 3–4 (citing Miura ¶¶ 75–80, 142, 143). As also discussed above, the Examiner finds that Baier discloses identifying information to be displayed based on device type, device status, and environment status. Final Act. 3 (citing Baier ¶¶ 54, 55, 76, 77, 80, 126); *see* Adv. Act. 2; Ans. 2–3, 8 (citing Baier ¶¶ 6, 76, 77, 80, 84, 117, 126, 136). In addition, Baier discloses dynamically adapting a user interface based on various conditions, e.g., device type, device status, and environment status. Baier ¶¶ 6, 64, 76, 77, 84, 126, 136; *see* Ans. 2–3 (citing Baier ¶¶ 76, 77, 84, 126, 136). For instance, Baier teaches interface customization based on information "provided by automation devices," such as "status of device . . . being monitored." Baier ¶¶ 64, 76, 77, 80, 117, 136.

Consequently, the combination of disclosures in Baier and Miura teaches or suggests that, when a first device changes status from on to off and a second device changes status from off to on, the user interface dynamically updates to remove menu items for the first device and replace them with menu items for the second device.

*The Rejections of Claims 7, 9, 14, 18, and 22 Under 35 U.S.C. § 103(a)*

For the obviousness rejections of dependent claims 7, 9, 14, 18, and 22 based in part on Baier, Miura, and Park, Appellants assert that each claim is "allowable for at least the reasons presented" in support of the associated independent claim. App. Br. 13–14. Appellants do not make any separate patentability arguments for these dependent claims. *Id.* Because Appellants do not argue the claims separately, we sustain the rejections of claims 7, 9, 14, 18, and 22 for the same reasons as the associated independent claim. *See* 37 C.F.R. § 41.37(c)(1)(iv).

## DECISION

We affirm the Examiner's decision to reject claims 1, 5–10, 12–16, and 18–22.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

## AFFIRMED